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ART. I. — *Le Barreau Romain. Recherches et Études sur le Barreau de Rome, depuis son Origine jusqu'à Justinien, et principalement au Temps de Cicéron.* Par GRELLET-DUMAZEAU. Paris: A. Durand. 1858.

CICERO and Quintilian have treated of oratory with a skill never reached by any of their imitators, so that a thorough study of their works is an essential part of juridical training. Through them the student is transported to the classic age of Rome, and to the period of classic discipline, which unfortunately tends to disappear in the turmoil of political agitation and the often fictitious wants of material life. Besides acquiring precious information concerning the law itself, the young man learns, in a beautiful and pure language, how to form his style, and to prepare himself for the duties of his future profession. Those great orators and masters have left nothing unsaid concerning the origin and the means of eloquence among the ancients; and in the work before us the author aims to make the reader acquainted with the lawyers themselves, their relations to one another, to their clients, and to the judges.

Advocates were contemporary with the earliest laws, and a necessary consequence of them. Their services became indispensable; for the customs were often obscure, incomplete, contradictory, and opened a vast field for arbitrary construction.

Like all nations in their infancy, the Romans were divided into various classes, more or less privileged. The best known division is that of the patricians and the plebeians, originally the conquerors and the conquered. The whole history of Rome is filled with the struggles between these two sections of the people, — a long strife, which ended by a parity of rights being granted to all Roman citizens. There was between the patricians and the plebeians a relation somewhat similar to that existing in the Middle Age between the feudal lords and their vassals. Such a relation was a necessary consequence of the social state; for when two classes of men are compelled to live in one body politic, the superior must take under its protection the inferior, which in its turn must acknowledge that protection by service in some form. The *patres*, in regard to their relations with the plebeians whom they had under their care, were called *patroni*, and the latter, in correlation, *clientes*, undoubtedly from *colentes*, which would indicate that the plebeians were originally bound to cultivate the soil in behalf of their lords or patrons. In course of time, the patrons abandoned their lands to their *clientes*, on the condition, among others, that the plebeian, after designating a patron, should form with him a contract of association upon the following basis. He was to furnish everything needed for the support of his patron; he was further to give dowries to his daughters, to procure his ransom in case he should be made a prisoner, and to pay for all his judicial suits; in a word, he was to provide for all his expenses according to his rank. On the other hand, the father or patron was bound to watch over the interests of his client, to protect him, his household, and his goods, and especially to defend him judicially against any kind of injury or damage to the enjoyment of his rights. These relations between patrons and clients were mostly regulated according to the law governing those existing between a father and his children. This explains the gratuitousness of the services rendered by the patron to his client. The assistance of the former was indispensable to the latter, for he had the monopoly of jurisprudence. But the time came when the publication of legal *formulæ* and the promulgation of the Twelve Tables destroyed that monopoly, and rendered the

study of the law accessible to all citizens. At a still later period, the co-operation of relatives and friends was substituted for the exclusive assistance of the patron.

The Roman policy was always to connect as much as possible the ever-increasing numbers of citizens of the lower classes with *gentes* and *patres*, in order to have through the latter a kind of surveillance over them; but, in spite of all these efforts, there was still a floating mass which could not be absorbed into the patronate. This mass formed the *plebs*, the common people, who, by combining their exertions with the *clientes*, finally succeeded in overthrowing the system of the patronate, which, like feudalism, bore within itself the germ of its own destruction; for, admitting that the contract binding both patron and client was at first equitable, — though it be difficult to suppose that agreements between rich and poor were made in a just spirit of reciprocity,— the equilibrium could not be maintained very long, especially on account of the ever-growing household expenses of the patrons, chiefly caused by rivalry and luxury.

Toward the end of the sixth century of Rome the last vestiges of the ancient clientship had almost entirely disappeared. Then, also, the love for dignities had succeeded to the disinterestedness of the citizens, and public offices, having become accessible to all, also became the aim of ambition. At that period the elective system being most largely developed, and rendering the masses influential, all those desirous of power strove to obtain their favor by indirect means. The bar was considered as the best school in which to prepare for the management of public affairs, and the surest way of obtaining public stations. From the days of the Gracchi to the time of the Empire the Roman state was always governed by lawyers.

Clientship having ceased to exist as a general rule, the advocate took the place of the ancient patrician; he made himself a patron by the mere fact of his instrumentality. His patronage did not, however, limit itself to the low class of the former *clientes*, but embraced rich and poor, patricians and plebeians; nor was it confined to giving them his judicial assistance, for he generally became a politician. Advocates aspired to form a circle of which they were to be the centre.

They recruited their adherents among all classes which had anything to gain by alliance with opulence and power. Their clients were bound in entire devotion to their new patrons, through whose assistance only they succeeded in opening for themselves the road to honors.

The vulgarization of the law through the Twelve Tables must have led to the establishment of lawyers as an independent profession, though it did not at once become what it was at a later period, characterized by habitual frequentation of the bar, and assistance granted without distinction of persons or in consideration of fees. The names of patron and client were not changed, though the new relations differed greatly from the ancient, and tended to be more and more modified, as the republic verged towards monarchy. The name of *advocatus* was employed concurrently with that of *patronus;* it indicated a free selection made by the client. That these advocati were looked for especially among relations and friends, and particularly among those who had devoted themselves to the study of the law, was naturally to be expected.

A people who, like the Romans, passed most of their time in the forum, surrounding the tribune, where the titles of their magistrates were examined and sifted, the laws elaborated, and the questions of peace and war decided upon, could not fail to be a people of orators. Quintilian speaks of the whole domestic education as tending to develop in the child the talent for oratory. At the age of fifteen he was put under the patronage of some renowned advocate, whom he did not leave until he was able himself to enter the lists. He frequented the house of his patron, availed himself of his conversation, followed him to the bar, and punctually attended his pleadings. Mingling with the people in the forum, being a constant attendant on the debates, and familiarized by examples often repeated, the young candidate rapidly acquired a facility of elocution and a practical experience which from the beginning placed the most difficult causes within his grasp.

The bar was held in Rome in such honor, that its offices were for a long time considered as a kind of initiation to civil duties, — a preliminary stage to the magistracy. The noblemen of those days had to pass through that trial, as noble-

men of a more modern period through the trial of arms. Everything was adapted to excite the ambition of young men; and the debates in the forum aroused the most lively interest among all classes of the citizens. People went there as to a theatre; and an orator or a lawyer considered it as the utmost glory to be applauded by the people, to be recognized by them, and pointed out in the streets. The house of a celebrated lawyer was constantly full of visitors. Men of all ranks thronged to solicit the assistance of his powerful eloquence, — for the Romans resorted to the agency of lawyers in matters of the smallest importance. The fame of the Roman advocates was such, that their assistance was often claimed by the provinces, whither they repaired in serious cases, accompanied by their professional brethren. For a long time the rostrum had been the contemporary of the bar; but the former fell when the Republic expired. The mighty Roman eloquence was no longer heard except at the bar, and the bar itself was gradually stripped of its importance and splendor. As long as the legal profession was practised with honor, it was held in high esteem and glory; but when luxury had given birth to the excessive demand for material enjoyments, and information had become an infallible means of acquiring wealth, the lawyers, and with them the whole profession, fell into discredit.

It was in the nature of things that men of the same calling should be united in a corporation. As soon as lawyers had become independent and professional, the bar was placed collectively under the government of common rules. Thus Cicero often speaks of his old *institutum*, and boasts of its lustre and independence; but it does not appear that this institution had an organized form. Tradition had been undoubtedly for a long time the only law of the body, and its unity was the result of a natural *esprit de corps*, rather than of the legal existence of the body itself. Since during the republican period the agency of the lawyer was subject to certain conditions of practice, incompatibilities, and disciplinary regulations, there is no doubt that the lawyers formed already at that time a body more or less distinct in the state; else we could not explain sundry facts, as, for instance, pro-

visions concerning the fees of the lawyers, admissions to the bar, suspensions, and defence made obligatory upon an advocate by a designation *ex officio* of the judge. The latter kind of defence often took place; in his edict, the Prætor said, *Si non habet advocatum, ego dabo*, and in doing so he had in view not only such parties as were unable to pay their lawyers, but also those who might be deprived of the assistance of a lawyer by the credit of their antagonists. Imperial constitutions went afterwards even so far as to forbid one party to monopolize all the advocates distinguished by their experience and their talents. The advocate designated by the Prætor could not, without showing good cause, decline to assume the case thus devolved upon him; if he did, his name was struck from the rolls.

Under the Emperors, from Theodosius to Justinian, the corporation of the lawyers was carefully regulated. It was called *collegium*, *ordo*, *consortium*, *corpus*, *toga*, *togati*, *advocationis matricula*. Admitted by special authority to practise in the tribunals, the lawyers were entered according to seniority, and their number was limited. They were subjected to an examination, enjoyed special privileges, and could be suspended or interdicted. In some of the higher courts the legal profession constituted a true monopoly.

Prohibitions from pleading are coeval with the time when the agency of the lawyer was transformed into a profession. Some of these prohibitions were absolute, some relative. Women were never forbidden to plead their own causes. A law of Numa, however, is said to have prohibited them from pleading in their husbands' absence. The privilege given them does not seem to have ever been much used; for on one occasion, a woman having pleaded in the forum, in a case in which she was concerned, the city was so amazed at the novelty, that the Senate ordered the oracle of Apollo to be consulted, in order to ascertain what it meant. A Roman lady, by the name of Amesia Sentia, once defended herself against an accuser. Her argument was remarkable for its method, clearness, and vigor. As she bore a man's heart under a woman's form, she was called Androgyne. Caia Afrania, the wife of a certain Senator Buccio, acquired a most detestable repu-

tation by her ardent love for chicane. She sued everybody. Once, in pleading before the Prætor, she spoke with so much impudence in her unjust cause, that she raised the scandal of the people, and from that time her name was proverbially given to all crabbed females. Valerius Maximus, speaking of her death (43 B. C.), says that it is better to chronicle the disappearance of such a monster than the date of her birth. It would appear that Caia Afrania not only pleaded in her own causes, but also for others, which gave rise to a law found in the Pandects in which she is called *improbissima femina.* According to that law, women were forbidden thenceforward to plead except in their own causes. Five years after the death of Caia Afrania, Hortensia, the daughter of the celebrated lawyer Q. Hortensius, appeared before the Triumvirs to speak in favor of the Roman ladies, whom they had heavily taxed. Her speech, worthy of the great name she bore, was crowned with full success. The satirist Juvenal speaks also of certain ladies who used to draw up papers for lawyers.

It would appear that, in the first years of the Empire, men could be admitted to the bar after completing their seventeenth year. This early age caused another satirist, Petronius, to say that babes in the cradle were swaddled in eloquence.

The incompatibilities of the legal profession with others were the same among the Romans as are generally admitted with us. They are, however, founded rather on custom than on positive provisions. An edict of Valentinian and Valens declared the functions of judge and lawyer in the same cause to be incompatible. Going further, a constitution of Justinian prohibited the holding of those two offices by the same person, on the ground that, each being sufficient to occupy the attention of one person, both could not be filled at the same time by the same individual. There was also a legal incompatibility between the functions of a governor of a province and the profession of a lawyer. But the governors could resume the practice of the law, after divesting themselves of their functions and being honorably discharged.

To be admitted to the bar under the patronate, it was sufficient for a man to show that he was a patron. At a later period the presentation, to the highest tribunals at least, by

an eminent magistrate, seems to have been required, or at least was practised. Obligatory conditions of admission do not seem to have been demanded before the bar was constituted into a real corporation, and the agency of lawyers raised to a public function.

In Justinian's time, five years of legal study were required for the lawyer, at the end of which he was examined. From A. D. 468, the candidate was further required to testify that he was penetrated by the holiness of the mysteries of the Catholic religion, under penalty, in case of infraction, of a perpetual exile and the confiscation of his property. Furthermore, the admission to pleading was subordinate to the special license of the Emperor. These guaranties of capacity and religious orthodoxy made neither orators nor jurisconsults. The science, stuffed with subtilties, died, as had, several centuries previously, the art of oratory.

From Constantine to Justinian the lawyers were divided into regulars, or *statuti*, and *supernumerarii*. The former only were inscribed on the rolls, and belonged to the corporation of advocates, who were attached to special jurisdictions. As to the latter, they were free to settle wherever they pleased. They filled up the vacancies of the former; for the number of the *statuti* was limited, varying, from the time of Theodosius to Justinian, from 150 to 16 at each tribunal, according to the importance of the provincial tribunals. Thus they were in full numbers at Rome and Constantinople, while there were only fifty at Alexandria. The lawyers whose names were not inscribed on those privileged lists were, however, authorized to practise in the inferior courts.

The *prevarication* of a lawyer, that is, the fact of his having betrayed the cause of his client by fraudulent manœuvres, and especially by means of corruption practised for the benefit of the opposing litigant, was at all times considered a criminal act. We have no examples of such cases under the Republic, though the corruption then already existing may allow us to conclude that such cases may have occurred. In Pliny's time they were frequent, and originated in a cupidity of the means of luxury. Numerous regulations and prohibitions proved powerless to extirpate that odious crime.

One of Valentinian's constitutions enjoined upon the lawyers to be reserved in their pleadings, and to refrain from any injurious or defamatory words foreign to the needs of the cause. Advocates were likewise forbidden to raise useless issues in behalf of litigious claims, and to negotiate with their clients. The only thing they were allowed to receive from the latter was their fees.

Justinian ordered the lawyers to take an oath in every case, by placing their hands on the Gospels, that they would employ all the resources of their science and talent for the defence of their clients, and that they would not voluntarily neglect any means in behalf of what they believed to be true and just. He further directed them not to take charge of any unjust causes, and even ordered them to abandon their clients, if, in the course of the pleadings, it should appear that the latter had knowingly led them into error. Lawyers could not, under his reign, be absent from the seat of their jurisdiction for more than five years with the license of the magistrate, nor more than two years without the same, under penalty of being stricken from the rolls.

The most precious privileges of the lawyers were never written, but existed previously to any regulations concerning the legal profession. But the privileges, properly so called, date from the time when the bar, ceasing to be accessible to all, became a function specially licensed by the Emperor, and limited as to its numbers. But it is proper to add, that those privileges derived their origin from services rendered, and from the high esteem in which the Emperors held the science of law and the oratorical art as applied to pleading. Speaking of them, Leo says: "The lawyers who penetrate the latent meaning of contracts, who by the power of argument in private and public affairs restore ruin or prevent it, are not less useful to mankind than the soldier, who sheds his blood in battles fought for his country and hearth. We consider that the defenders of our empire are not only those fighting with the sword, the shield, and the cuirass; the lawyers serve it also, when, with a modesty suited to true eloquence, they restore the hope of the sufferer, protect his life and his family." At the end of the fifth century of the Christian era,

that is, when the lawyers had been fully incorporated and placed under the inspection of magistrates, they obtained various marked privileges, and, among others, exemption from heavy municipal taxes and from sundry undesirable public offices. Their sons were inscribed upon the rolls before the *supernumerarii*. Anastasius conferred the title of count of the first rank — *clarissimi primi ordinis comitis dignitas* — upon some lawyers. The most ancient advocate on the rolls had the title of *primas*.

The Roman people always, but especially under the Republic, attached a great importance to external signs, adopted to indicate the social classification of citizens. The dress was, by its form and color, one of those signs. The white toga, being the legal dress of the Roman citizen, was also the robe of the lawyer. Towards the end of the Republic the toga had already fallen into disuse, except with the Senators and Equites. That robe, inconvenient by its fulness and its color, was replaced by a longer coat, or *tunica talaris*, and a cloak which was used over the former, *lacerna*, or *penula coloris pulli*, of brown or chicken color. Thus certain practitioners were called *penulati*, or *pullata turba*, which was taken as synonymous with rabble. Augustus ordered the Ediles to see that no lawyer should appear in the forum without wearing his toga. Hence the creation of a vestiary in the basilica, wherein the ever-increasing number of lawyers who disliked to wear the toga in the streets took and left their robes, *toga forensis*. The Emperors several times attempted to revive the use of the toga, but their efforts were powerless against prejudice, and the cloak with the tunic above mentioned finally prevailed. The costume worn in many European states by the lawyers and judges is of Roman origin, though it has assumed with some a rather strange cut.

In the classical age of eloquence, the lawyers never neglected anything that could increase the power of their oratory. Thus they made a special study of the great art of dressing themselves, and parading the toga. Hortensius, the celebrated orator, used to wear a looking-glass to adjust his dress. He is reported to have once brought a suit against one of the fraternity who had deranged the symmetry of the folds of his robe.

No *petite maîtresse* of the present day ever took a greater care of her dress than did the Roman *togati*. It must, however, be said, that the robe helped the speech, as it permitted the orator to take an impressive attitude, and to give stress to his gestures, — an art too much neglected in our days, both by the pulpit and the bar.

At different periods the lawyers had various names. We are already acquainted with the terms *patroni* and *advocati*. Sometimes they are called *causidici*. There was besides a subordinate class of lawyers, whose agency was used in certain parts of the pleadings. Among these were the *leguleii* and *formularii*, who had with each other a great affinity, — two species of the same genus. These jurists of second order assisted the pleading parties, and the lawyers who were not very conversant with the rigorous forms of the civil law. Speaking of one of those inferior jurists, Cicero says that he was *cautus et acutus, præco actionum, cautor formularum, auceps syllabarum*. These *minores advocati* were recruited among the lawyers who had not been successful at the bar, or had recoiled from the labors requisite to acquire the art of oratory.

The *monitor* was a *leguleius* attached to a lawyer, in order to suggest to him prompt answers to incidental, unexpected questions. He was sometimes called *ministrator* or *subministrator*, because of his providing his employer with weapons, — *quia tela agentibus subministrabat*. Furthermore, the *monitor* filled the office of a prompter; he came to the assistance of the lawyer whose memory failed; with his memoranda in his hands, he took his seat behind the advocate, and for this reason was called *monitor posticus*. The *morator* was another lawyer of the same order. He spoke when the patron was tired, or when the latter did not think it consonant with his dignity to speak himself. One of the services required from the *morator* was, as the word indicates, to drag the matter into length with the view of gaining time. The *cognitor* was a kind of mandatory, whom the pleading party substituted for himself in the course of the pleadings.

As with all nations, both ancient and modern, the nicknames given to lawyers by their brethren and the people were not wanting among the Romans; they were invented to revile

them or to make them contemptible. Thus we have the *rabulæ*, from *rabies*, rage; or from *radere aures*, to grate the ears; or from *ravis*, hoarseness. Others were called *latratores*, barkers; *vitilitigatores*, a word composed by Cato, from *vitium* and *litigare; clamatores*, *proclamatores*, brawlers, squallers. All these names were indiscriminately given to lawyers who made show of their ignorance, their impudence, and their rapacity.

It has been repeatedly said, that the Roman lawyers never took any fees for their services, until long after the fall of the Republic, and that the legal profession lost its lustre as it became less disinterested. This is an error, which partly rests upon ignorance of the relations above described, existing between patrons and clients. We have seen that those relations could give birth to no fees; for they were founded upon mutual services, excluding any kind of remuneration. In the transition between the patronship and the lawyership, the litigant parties still often applied for assistance to their former patrons. These, who up to that time had not necessarily been lawyers, began to feel that, in order to retain somewhat of their old prestige, they ought to devote themselves to jurisprudence. They would at first take no fees, as custom and pride forbade; but it was tacitly admitted that they would receive a gift on the score of remuneration, — *honorarium*, *xenium*, *solatium*, *merces*, words which imply the idea of a free and spontaneous present. The *palmarium* was added subsequently. This was a gift of a peculiar nature, which was offered to the lawyer whose efforts were crowned with success. As has been said, the patronate did not suddenly disappear from the Roman institutions; on the contrary, its vestiges could be traced for several centuries. Endeavors were made by some to revive that institution; but it was no longer an admitted custom. One of these efforts gave birth to a certain law called *Lex Cincia*, from the tribune Marcus Cincius Alimentus, who proposed it in the year 549 U. C. Of that provision we have only the title left, *De Donis et Muneribus*. Much has been written on this law, which, as it appears, was intended to prohibit all public officers (including lawyers) from receiving as such any compensation from the

parties. We know that Cicero, who was reputed to be a rigid observer of the law, accepted the gift of a library presented to him by a friend. If that law had been directed against the license of the lawyers, as Tacitus calls it, it might have done a great deal of good; but if it was meant to be absolutely prohibitive, it could be respected only by a small number of lawyers, whose interest it was to make a show of their generosity. Assistance in the tribunals having become a real profession, requiring special studies and continuous labor, most lawyers received a remuneration, and the law was powerless against abuses in this respect. If the law prohibited the gifts of suitors, it did not annul the legacies made by clients to their lawyers. Legacies of this kind were reputed very honorable, when not the effect of fraud and *captation;* so that Cicero boasted of having received in that manner over twenty millions of sesterces. Given to a lawyer as a mark of esteem and gratitude, such bequests were to be considered in most cases as a spontaneous remuneration for services rendered. These legacies became, in the course of time, one of the principal sources of the immense fortunes which hastened the ruin of the Republic, by an excessive development of individual ambition, and the corruption which was its natural consequence. Roman history is full of examples of the most odious rapacity among lawyers, accompanied by "prevarication," against which the laws proved powerless. If for a short time abuses were stopped, they soon reappeared with all the greater audacity. Honest Quintilian, writing on the subject, says that the fees ought never to exceed either the means of him who pays or the wants of him who asks them, and that, after all, fees should be considered merely as an exchange of services. Under Alexander Severus, the most flourishing epoch for jurisprudence, the study of the law seems to have purified the manners of the lawyers. The fees ceased to be extravagant; lawyers did not ask from their clients more than a reasonable compensation, nor would they make any compromise with them as to the eventual issue of the case, still less assume to themselves the perils of the cause for a pecuniary consideration.

The debates took place in the forum, and originally *sub dio.*

But the changes of temperature which render storms so frequent and sudden at Rome, must have early required a shelter for the magistrates, the parties, and the people. There was for that purpose a basilica in the forum. One single forum proving insufficient, others were opened in the course of time for the administration of public affairs and of justice in the various stages of jurisdiction.

After the fall of the Republic, when most of the political powers had been vested in the hands of the Emperors, publicity in the tribunals was gradually discontinued; but in Horace's time the parties were still pleading in the forum, "in spite of the noise of two hundred carts, and the discordant sound of the trumpets of funeral processions."

There were with the Romans, as with us, days when no pleadings took place, and no justice was administered. These were called *nefasti;* for the Prætor could not then speak (*fari*) the three solemn words *do*, *dico*, *addico;* and *fasti*, on the contrary, were the days in which justice had its free course. All days of public festivals were *nefasti.* Those marked with a fatal presage were called *religiosi.* The first day in the year was a holiday for the people, but not for the tribunals, "lest," says Ovid, "a year begun under the auspices of laziness should be spent in idleness." Many constitutions regulated and modified these *dies fasti* and *nefasti*, and the holidays. There were vacations at the harvest and vintage time, lasting from three to six weeks. Under the Christian Emperors, affairs were suspended at Christmas, Epiphany, and Easter, and in the week preceding and the one following each of those days. For criminal matters, all days were judicial, except the above-named and the anniversaries of the foundation of Rome and Constantinople. The vacations of the criminal judges were more limited than those of the civil jurisdictions, and took place only during the hottest season.

The curiosity of the Roman people was incessantly turned to the judicial debates. They followed with eager attention the success of the old orators, and the debates of the young candidates. On the other side, the lawyer attached a great importance to his pleadings. To speak incorrectly or indifferently would have been an avowal of powerlessness and

uselessness. The art of oratory was considered so important, that litigant parties preferred an orator to a jurisconsult, or they took the former and secured for him the assistance of the latter.

Extemporaneous speaking, *non compositum domi*, was the object of the lawyer's greatest ambition; but among the Romans the exercise of that faculty was exceedingly difficult, on account of their habit of bestowing particular attention on the symmetry and the arrangement of their words. Augustus committed to memory all his speeches, and in his old age he read them. The debates in the Senate sometimes took place by means of written papers communicated among the orators beforehand. Titus was considered as a very talented orator, on account of his great facility in expressing his ideas; his biographer, wishing to give a high opinion of him, says that he went *usque ad extemporalitatem.* Cicero, Pliny, and Quintilian give to students of the oratorical art the best advice and directions, which are perfectly applicable at the present time.

At daybreak clients went to their lawyer and filled up the halls of his residence. They accompanied him to the forum; the most attentive of them carried his satchels. The tribunal was open from early in the morning till dark; sometimes the pleadings were prolonged into the night, when torches were lighted.

In important cases argued before the Prætor, this magistrate sat upon a platform, between a *hasta* and a sword, emblems of his *imperium* and power. Below and before him were the judges, seated upon *subsellia*, in a half-circle. The accused party and his defenders occupied the left, a few paces in front; the accusers were on the opposite side. The orator took his place at the bar, in front of the tribunal, assisted by his clerk and the jurisconsult who had given his opinion on the case. The relatives and friends of the accused surrounded him.

The lawyer generally stood while speaking; he was, however, allowed to sit whenever he chose; but he rarely made use of this privilege, except in cases of small importance, or before judges of an inferior rank. The necessity of making

himself heard by a large number of auditors compelled the orator to raise his voice exceedingly; sometimes he screamed rather than spoke. It was not unusual to see him, while speaking, going up and down within the space left open between the judges and the bar. Quintilian authorizes this walking, *ambulatio*, *incessus*, but only during the time necessary for the plaudits to cease. Some lawyers, in the heat of their speech, went near to the *subsellia* of the judges, and, as it was not decorous to turn the back upon them, they receded backwards.

With a southern people, gestures must have played an important part in the speech. They were the subject of a special study. Masters gave instruction in this portion of the art.

When the orator was exhausted, he resorted to a vessel of water, and there are reasons to believe that something was added to correct the insipidity of that liquid. Sometimes, also, the lawyers stopped the course of their pleadings to eat. Quintilian, who cites the fact, says that this was an old habit, still in use in his time.

During the speech, the opposing litigant jested with his neighbors, tossed his head, shook his shoulders, took notes, wrote letters, gave orders, and received messages. Sometimes, also, a conversation took place between the lawyers, whom the judges often interrupted to ask questions.

When the audience wished to express their approbation of an orator, they indicated it by the words *bene*, *præclare*, *belle*, *non potest melius*, and the judges sometimes blended their congratulations with those of the crowd. The division of the discourse was rigorously observed, especially after the introduction of the Greek methods. Every speech had its exordium, narration, confirmation, refutation, and peroration. For the latter, the lawyer summoned all his resources, and left no art unemployed to move his judges. At the end of the speech the friends of the lawyer thronged around him with congratulations; the crowd, when strongly impressed, saluted him with their acclamations. But the abuse of these manifestations depreciated their value. Clappers were soon introduced; they were hired by the day, and at a given signal a

crowd of them ran into the halls, led by their chiefs, and acting under their command. Praises, yells of admiration, often accompanied by stamping of the feet, arose from all quarters.

Under the Lower Empire, the judges occupied their seats in special halls, called *secretaria*. The people were admitted; but the interest they took in pleadings diminished more and more. Between the judges and the people there were curtains, *vela*, which were drawn when the judges had to consult with one another to form their decision. As with all primitive nations, religious awe caused a bar to be erected between the priest of justice and the *profanum vulgus*.

The *altercatio* was a succession of short and disconnected speeches, in the form of dialogue, devoted to the discussion of evidence. This part of the procedure was considered as the most delicate, since it required a great deal of acuteness, circumspection, and presence of mind. The successful issue of the cause often depended upon the way in which the lawyers proceeded in the *altercatio*. Some of them were assisted by jurists, who prompted their answers; hence the use of having for important cases one lawyer for the *altercatio*, and another for the final pleading. Often the *altercatio* degenerated into violent disputes, and gave birth to direct invectives, contradictions, and personalities of all kinds. The parties sometimes even went so far as to unsheathe their poniards and fight.

According to a law of the Twelve Tables, the speeches of the orators were to be finished at midday; and causes were to be decided by the judges before sunset. In Cicero's time, the length of the pleadings depended on the judge. Then, as in our days, lawyers were skilful in inventing means of delay. In 701 U. C. Pompey procured a law, according to which two hours were granted to the accuser, and three hours to the accused for his defence. This law was modified afterwards; the time was lengthened, but in the proportion fixed by the Lex Pompeia. At the beginning of the pleadings a *clepsydra* was placed in front of the lawyer; the lowest end of that timepiece, which had the form of a funnel, terminated in a round, narrow opening, from which the water escaped drop by drop. It took twenty minutes for the clepsydra to become

empty. According to the case, a certain number of clepsydras were granted to the lawyers, and sometimes the judges bestowed one or more in addition. This was called *dare aquam*. Instead of saying of a lawyer, He spoke an hour, or three hours, the Romans would say, He spoke three, or nine clepsydras. If the judge denied an addition of water, the orator was stopped at the last drop. But when he ceased to speak, in order to read some document, for instance, the sergeant placed his finger under the clepsydra to stop the water. This was called *sustinere aquam*.

The rules concerning the length of the pleadings varied very much. Speaking on this subject, Pliny says: "As to me, whenever I judge, and I act more frequently as a judge than as a lawyer, I grant as much water as is required from me; for I think it imprudent to circumscribe beforehand a cause not yet heard, and to assign it *a priori* a term when its nature is unknown. Patience ought to be considered as an integral part of justice; it is without contradiction the first duty of a judge who wishes to enlighten his conscience. But one will object, 'Lawyers often say useless things.' It may be, but it is better to hear them, than not to hear necessary things; and how can you know beforehand that they are useless, if you do not listen to them?" Marcus Aurelius used to give a good measure of water to the lawyers; he generally let them speak as long as they liked. He is said to have listened in a single affair for over ten hours. Ulpian recommends the judge to hear patiently, but in a moderate measure, lest his forbearance should be considered a weakness. A constitution of Valentinian authorized the lawyers to speak as long as they chose, on condition that they should make use of that privilege with the view of increasing, not their fees, but only their reputation. Speaking of himself, Pliny says that he never was so much applauded as for having remained silent after a miserable accusation of his antagonist.

Within the tribunals, but unconnected with them, there were clerks who took notes of the speeches of the parties, and of the evidence. They formed a corporation called *notarii*, *scribæ*, *exceptores*, *amanuenses*. They used short-hand writing. Speaking of them, Martial says:

" Currant verba licet, manus est velocior illis."

But the orators were too regardful of their reputation to have their speeches published as they were pronounced. Thus, all the orations of Cicero which we possess were carefully revised and corrected by him after being delivered. In doing so, the lawyers not only suppressed the inaccuracies and repetitions of their *extempore* speeches, but they at once condensed them and made considerable additions to them, so as to create a new work; while, on the other hand, they were anxious to preserve the form and method of an extemporaneous speech. The orators of renown always wrote their pleadings after pronouncing them, and put them into a shape suitable for publication. The young candidates at the bar copied the speeches, and furnished them for distribution even in the provinces. The few we have make us regret that we have not many more. But some unexpected chance may yet enrich our classical literature by new discoveries.

Learned as were the lawyers, especially during the classical period of Rome, it is not astonishing to see them making use of their erudition; but they did it with sobriety, and only to divert the ear from the asperities of the judicial language. As the bar declined, advocates often indulged in idle digressions. Martial has the following epigram on such a wearisome lawyer: —

"'Brother lawyer,' said one to his antagonist in the cause just argued, 'there is no violence, nor murder, nor poison, there are only goats. I want my three goats, which a neighbor has stolen from me, and I am requested by the judge to prove the fact. And you, with the whole stress of your lungs, and all the vigor of your fist striking on the bar, — you speak of the battle at Cannæ, of the war of Mithridates, of the Punic perfidies, and the outrages of Sylla, Marius, and Mucius! Speak, I beg — speak at length of my three goats.'"

Roman history is full of *bon-mots* uttered at the bar, of *facetiæ* of every kind, in which the Romans frequently indulged. Many of them, however, were not dictated by the purest taste, nor distinguished for chasteness of thought. This sort of wit began to be in vogue in the second century, that is, when the art of oratory was already declining or had ceased to exist. The most eminent orators carefully studied the

Greek works, in which the art of exciting laughter was taught in special treatises *ex professo*. One of these methods was to ridicule one's adversary by imitating his gestures, voice, and gait.

The liberty of speech was unlimited, from the time when the patronate began to lapse into the lawyer's profession, up to the period when Rome was transformed into two civil camps. One of the causes of that liberty is to be found in the great number of judges who generally composed the tribunals; for the fewer the judges, the greater cause for fear has the lawyer that his allusions may be considered as personal. When Rome was divided into two factions, which destroyed each other by turns, as they were conquerors or conquered, the lawyers deserted the political cases; but their terror disappeared with its cause. In those dark times both criminal and civil justice were equally corrupted; the politicians interfered with the judges, who became their docile tools, and intrigue prevailed everywhere. The wealth of a party was the best recommendation. This state of things sufficiently explains the license of the lawyers towards the magistrates and the judges. Cicero gives of himself numerous examples of that boldness and intemperance of language. Convinced as he was of his superiority over all his rivals, he was, with his moral qualities and defects, perfectly suited to judicial jousts. He once terminated a speech in favor of a client with these threatening words: "Judges, you are going to try him, and the Roman people is going to try you." The law of the Twelve Tables punished slander; but we do not find a single case of such a suit in that period. As to the magistrates, they were probably protected against the violence of speech. Those habits of language are partly explained by the principle of liberty of discussion, which was so absolute that no citizen could be arrested. Such broad license of speech could not survive the Republic; for it was incompatible with the principle of authority, which is the basis of all monarchical governments. It gave rise to private hatred and public disturbances, and greatly contributed in producing the commotions which caused the fall of the popular government.

Long before the legal profession had assumed the shape of a

corporation, the relations between lawyers were governed by a law of propriety, and that spirit of brotherhood which arises from a community of labor. But these feelings were often stifled by rivalry and envy, and frequently the old members of the bar were pitiless towards new-comers, especially when the former were patricians and the latter not, unless these could redeem by the prestige of uncontested talent the inferiority of their origin. Cicero has shown himself just, benevolent, and disinterested towards his contemporaries. He was as skilful in setting forth their good qualities, as in leaving their defects in the shade. Some of his writings indicate that a true *esprit de corps* was known to the Romans, and that, if we do not find it more frequently displayed, it was less the fault of the men than of the institutions.

The ancient literary monuments we have exhibit rather the worst side of the legal profession, than its virtues and its good qualities. They are full of cases of corruption, prevarication, and avarice among the lawyers. Their venality had become proverbial. Luxury had reached such a degree, that every one was carried into the vortex. One of the chief means of becoming rich was to obtain public offices, and as their duration was brief, the magistrates grew wealthy in a short time, after having first impoverished themselves in buying votes. The ambition of the bar existed in the nature of things at Rome, and was nurtured by elections which gave birth to factions, peculation, and bribery.

After the fall of the Republic, when there was no longer a chance for the lawyers to manage factions, nor opportunity for getting rich rapidly by means of public offices, which were now for life, with a modest but regular and sufficient salary, they satisfied their cupidity by acting as lawyers in private matters; but they had anew to struggle against crowds of rivals, for the numbers of the legal profession were increasing more and more. Some succeeded in making use of the charlatanry of luxury. Some, for instance, went to the basilica in litters, preceded by their clients, and followed by hordes of slaves; others wore on their fingers flashing rings, which they hired by the day. Speaking of that class of men, Juvenal says: "The purple and the amethyst constitute the value of

the lawyers; it benefits them to make themselves conspicuous, and to make believe that they spend more than their income." But those who succeeded in this way were few; most of them vegetated in the most miserable condition, and could not pay their rent. Some had an additional profession. In one of his numerous epigrams directed against lawyers, Martial speaks of one who drove mules when he did badly as a lawyer.

With the ancient Romans, the language was, like their institutions, simple, energetic, free, and this was also the character of their oratory. The bar had not yet become an arena open to ambition. The judicial debates were solemn, made solely in view of the client's interest, and not for the sake of vanity or gain. At that time, speech, though not deprived of a certain elegance, was less ornamental than substantial, more nervous than copious. One Cethegus was surnamed the Marrow of Persuasion, *Suadæ Medulla*. Cato was the first at Rome who set rules for eloquence. By the influence of philosophical methods imported from Greece, the oratorical art made some progress; the language lost its rudeness, without being impaired in its originality. The names alone of the orators and lawyers who distinguished themselves by their style and eloquence would occupy several pages. The progress of style in oratory reached its perfection under Cicero, though several orators nobly followed in his steps, and were remarkable for their taste, elegance, purity, copiousness, and dialectic skill. It had then become the fashion for young men to go to Greece and Asia Minor, and to enter the schools of famous rhetoricians, whose splendor, however, did not last very long. Thence they brought back what Cicero calls the Asiatic style, — a compound of Greek subtilties and Oriental pomp. The whole was seductive, but false.

The moral dissoluteness which preceded the fall of the Republic, and reached its climax in the first period of the Empire, was not suited to restore severity to the style, and from that time it declined more and more. The bar fell to such a degree, that Pliny thought that his dignity compelled him to leave it, which he did after having been its ornament for the greater part of his life. Hardly any of the splendor of that eloquence which was the glory of the old Roman forum

can be found under the Cæsars. The bar was to flourish again, but solely by reason of the jurisconsults. The orators had left Rome forever.

Communication with Greece having become more and more frequent, the citizens of Athens and of Rome were, so to speak, blended, and philosophy was naturalized on Roman soil. The men of the bar, who are everywhere at the head of progress, acted a conspicuous part in that intellectual movement, though they did not carry it very far. They generally adopted the doctrines of Zeno, as more appropriate to the times, and thus the Stoic philosophy, transmitted from generation to generation, was prevalent in the most classic period of jurisprudence, from Hadrian to Alexander Severus. The Epicurean doctrine found but few partisans at Rome. The greatest service rendered by the Greek philosophers to the bar, was to create the art of oratory. By their teaching of rhetoric they demonstrated that that art could communicate to reason a degree of power before unknown; but, on the other hand, they predisposed the Roman bar to sophisms, sharp points, and witticisms.

It has been much questioned to what degree the various philosophical sects had an influence upon the Roman law, and which system left its special stamp on the laws and on the teachings of the jurisconsults. This is a question the solution of which is difficult, if not impossible. It can only be said with certainty, that philosophy induced the jurists to devote their attention to those high speculations in ethics which have so great an influence on the law. That influence must have been felt at the bar; and if it did not prevent its decline, it assuredly postponed its fall.